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DOMESTIC CORPORATIONS.

ILLINOIS.

NOTICE OF STOCKHOLDERS' MEETING. Where the statute requires notice of the annual meeting to be given in writing to stockholders a by-law provision designating the time and place is not sufficient. Notice is indispensable unless all the stockholders waive notice either expressly or by consenting to or participating in the meeting. The fact that all stockholders are present does make the meeting valid if a single stockholder refuses to consent or participate. People v. Matthiessen, 109 N. E. 1056.

STOCKHOLDER'S QUALIFICATION TO BE DIRECTOR. A will provided that the trustee thereunder should have power to transfer one share of stock to another person to enable him to act as a director in a corporation. The person to whom such share was transferred handed the certificate back to the trustee with a memorandum wherein he acknowledged that he held the stock for the sole purpose of being qualified to act as a director and declaring the beneficial ownership to be in the heirs under the trust. The Supreme Court of Illinois held that he was nevertheless duly qualified to act as a director, since, as to the corporation, he held legal and equitable title. A director is a mere agent and need not be a stockholder unless there is express statutory requirement. People v. Lihme, 109 N. E. 1051.

KENTUCKY.

STATUS OF PREFERRED STOCKHOLDERS. Holders of preferred stock were held not to be corporate creditors under the laws of Kentucky, even though the certificate of preferred stock provided that the preferred stock was to have a lien on the corporate assets, and was to have been redeemed after certain stipulated periods. Smith vs. Southern Foundry Company, 179 S. W. 205. It appeared that, notwithstanding a charter provision giving preferred stock a lien, that the corporation had subsequently executed a mortgage to a trustee to secure a bond issue. The plaintiff brought a bill in equity praying, inter alia, that he be given a

prior lien on the corporate property. The court held that preferred stock can have no priority over creditors, unless by virtue of an express statutory provision, and that the charter and certificate of stock must be construed in connection with the statutory law on this subject, and since there is no express statute authorizing a corporation to give preferred stockholders a lien against corporate assets that the priority which preferred stock may have as to dividends, liens, or redemption, can relate only to priority which preferred stock may have over common stock. The court further cited with approval a prior decision in Kentucky, which said—that the capital of a corporation is the sum total of its stock whether common or preferred, and that as between stockholders, of any class, and corporate creditors, all stockholders are equally liable. In cases where the corporation is solvent, however, and the rights of creditors will not be affected, agreements between stockholders as to preference, may be enforced, but not otherwise.

MAINE.

STOCKHOLDERS' LIABILITY FOR BONUS STOCK. Bonus stock issued by authority of the Board of Directors of a Maine Corporation subjects the person receipting for and accepting such stock to liability for the par value of the shares. Sullivan vs. Farnsworth, 179 S. W. 317, where a stockholder was sued by a receiver for the corporation in the Supreme Judicial Court of Tennessee. The alleged liability was that of an implied contract of subscription. The court held that the liability, if any, was to be determined by the laws of Maine which provided, inter alia, (Chap. 47, Sec. 87), that capital stock subscribed for, stands as security of corporate creditors, and that no payment upon stock subscriptions shall be deemed a proper payment within the purview of the law unless bona fide made in cash, or in some other thing at a bona fide and fair valuation. In answer to the defence the stock had been issued to the defendant in consideration of the fact that the defendant, man of standing, had loaned his name to the enterprise and that the Board had adjudged that as a fair value for the stock issued, and, that in the absence of averment and proof of fraud, (as provided by the statutes of Maine) their judgment was to be considered conclusive, the court said that the stock was issued without consideration and the bare averment that it was issued without consideration was sufficient to satisfy the statute as to averment or proof of fraud.

NEW YORK.

INSPECTION OF CORPORATE BOOKS BY DIRECTOR. The personal right of a director to examine the corporation books is unquestioned, and because such corporate accounts may often be intricate and complicated, an accountant or attorney at law may aid the director in this investigation. The director cannot, however, delegate his right entirely to an audit company. It is his duty to make the examination because of the trust and responsibility of his fiduciary office. On the other hand, the corporation may rightly object to disclosing its affairs to the unchecked scrutiny of a third person against whom there is no protection such as that afforded by the fiduciary responsibility of the director and the judicial control of his acts. People v. Borgstede, 155 N. Y. S. 322.

RATIFICATION. An unauthorized contract made by a President of a New York corporation will not be presumed to have been ratified merely by the failure of the Board of Directors to dissent within a reasonable time where the Board is not shown to have had actual notice of the contract. Watkins Salt Company vs. Mulkey, 225 F. 739. In this case it was contended that it was to be assumed that knowledge of the president of this transaction was imputable to the corporation itself and on this theory the lower court excluded evidence that tended to show that the matter had never been brought to the attention of the Board. This the Circuit Court found to be erroneous and it held that there should have been evidence to show that the president communicated his knowledge on the subject to the Board, otherwise it cannot be assumed that the unauthorized contract has been ratified by failure to dissent.

TRADING STAMPS. The issue of trading stamps cannot be considered unconstitutional but may be unlawful if they violate Section 140 of the State Banking Law. A company which proposed to issue trading stamps payable at a bank was held to be in violation of the aforesaid section and also of the General Corporation Law. Attorney General's Opinion, Oct. 15, 1915, State Department Reports, Vol. 5, page 92.

MANAGERS' SHARES. The charter of the American International Corporation, filed Nov. 23, 1915, contains a unique capital stock provision reading as follows:

"The amount of capital stock of the corporation is Fifty million Dollars ($50,000,000), of which One million Dollars ($1,000,000) is preferred stock (to be known as 'Managers' Shares'), and Forty-nine million Dollars ($49,000,000) is common stock.

The preferred stock shall be entitled to receive out of surplus profits, dividends at the same rate as that paid on the common stock until dividends aggregating seven per cent. (7%) shall have been paid or declared on both classes of stock during any one year. Thereafter, the preferred stock shall be entitled to receive one-fifth (1/5th) of any further distribution of surplus during that year, and the common stock shall be entitled to receive four-fifths (4/5ths) thereof.

Upon the liquidation of the corporation and the distribution of its assets, the preferred stock shall be entitled to receive an amount equal to the par value thereof, before any distribution shall be made to the common stock, which shall be entitled to receive out of the assets then remaining an amount equal to the par value thereof; after which, the preferred stock shall be entitled to receive one-fifth (1/5th) of the assets, if any, then remaining undistributed, and the common stock shall be entitled to receive four-fifths (4/5ths) thereof."

* * * * * * * * * *

No preferred stock shall be issuable or transferable to any person not an officer, director, agent or employee of the corporation. In the event of the death of any holder of preferred stock, or if any such holder shall, for any reason, cease to be an officer, director, agent or employee of the corporation, the corporation shall thereupon have the right to purchase the preferred stock held by such person. If the corporation elects to exercise such right, the price to be paid for such preferred stock shall be its par value, unless such person, or his legal representatives, shall, within

thirty (30) days after notice of such election, either agree with the corporation in writing upon some other price to be paid for the said stock or serve upon the corporation a written demand for an appraisal of the stock, appointing therein an appraiser to represent him; whereupon, the corporation shall appoint a second appraiser, and these two shall appoint a third; and the decision of any two of the appraisers thus chosen shall be conclusive as to the price to be paid by the corporation for the stock. Upon tendering to such person, or his legal representatives, the price of such stock, determined as above provided, the corporation shall thereupon acquire the entire interest in the said stock. Subject to the foregoing provisions, any preferred stock so acquired by the corporation, may, from time to time, be sold, reacquired and resold by the corporation, at such price and upon such terms and conditions as the Board of Directors may deem advisable; but no such sale shall be made to a person not an officer, director, agent or employee of the corporation."

OKLAHOMA.

TITLE TO REAL PROPERTY. Art. 22, Sec. 2 of the Oklahoma Constitution forbids a corporation holding real estate except in incorporated cities or towns or such as may be necessary for the business for which it was chartered or licensed. A conveyance to a corporation in violation of that provision is not void, but merely voidable, and ordinarily the state alone can question the corporation's right. Local Inv. Co. v. Humes, 151 Pac. 878.

PENNSYLVANIA.

INSPECTORS OF ELECTION MUST BE SWORN. Failure of tellers or judges of election to take an oath or affirmation before entering upon the discharge of their duties at an election held at stockholders' meetings will invalidate the election. This was so held in Com. ex. rel. Boyd, et. al., vs. Bricker, et. al., C. P. Allegheny County, April Term, 1915 No. 717, where quo warranto proceedings were instituted to oust directors chosen at such election. The court, Reid, J., held that the act of April 29th, 1874, P. L. 78, Sec. 8, requiring judges or tellers to be sworn, is mandatory, and if the legality of an election be questioned on the ground of the omission of the oath the omission will be fatal and the entire election invalid. The court further remarked that it could not be urged in support of the validity of such election that no one required the oath, or that it had been waived by common consent and that there was no miscount of votes or acceptance of illegal ballots.

QUEBEC.

STOCKHOLDERS MEETINGS. Where the by-laws of the company require the meetings of shareholders to be called by the president of the company at the written request of five members; a meeting called by the secretary-treasurer, without the consent and against the will of the president is illegal, and any resolution adopted at such meeting is void. Courchene vs. Viger Park Co., 23 D. L. R. 693.

SOUTH CAROLINA.

SECRET PROFITS OF PROMOTER. A promoter who was to receive stock in a corporation for his services in acquiring property made a secret profit by conspiring with the holder of the option. The court held that the stock issued to the promoter did not irrevocably fix his right to it as against the corporation. It could be cancelled in consequence of the fraud. The holder of the option, whether considered as a party to the fraud or not, had no right to any part of the promoter's stock as against the corporation, as his rights could not rise higher than the rights of the promoter. Dunlap v. Twin City Powder Co., 226 Fed. 161.

U. S. DISTRICT COURT.

DISTINCTION BETWEEN HOLDING COMPANY AND SUBSIDIARY. When one corporation owns all of the stock of another, a court of equity may in some instances and for some purposes ignore the existence of the subsidiary and treat the holding company as if it alone were the owner and operator of the business of the subsidiary; but courts cannot disregard the forms prescribed by statute for securing corporate rights. Where the holding company is without authority under its charter to conduct the business of the subsidiary corporation, the distinction between the two corporations is a matter of substance and not merely of form and their dependent existence must be recognized. Sabre v. United Traction & Electric Co., et. al., 225 Fed. 601. The legal fiction of district corporate entity is disregarded when necessary to do so in order to circumvent fraud, and also when a corporation is so organized and controlled and its affairs are so conducted as merely to make it an instrumentality or adjunct of another corporation. Hunter v. Baker Motor Vehicle Co., 225 Fed. 1006.

RIGHTS OF STOCKHOLDERS. A stockholder in a holding company is not a stockholder, nor entitled to the rights of a stockholder in the subsidiary corporation, and an act of the subsidiary by the unanimous vote of its stockholders does not require for its validity the unanimous consent of the stockholders of the holding company. Sabre v. United Traction & Electric Co. et. al., 225 Fed. 601.

FOREIGN CORPORATIONS.

KENTUCKY.

A FOREIGN LIFE INSURANCE COMPANY was held not to be doing business in the State of Kentucky where it had formally withdrawn from the State, but continued to collect premiums by mail on business previously written. Provident Life Saving Insurance Society vs. The Commonwealth of Kentucky. United States Supreme Court No. 328. October term 1915 (not yet reported).

The State of Kentucky attempted to charge the defendant with a license tax for the privilege of doing business in the State. The State contended that defendant

was doing business as long as it insured the lives of residents and furnished protection to the beneficiaries. It was not disputed, however, that the company had withdrawn from the State and that it was not soliciting new insurance or collecting money, except through the mails, and that it had no offices or agents in the State.

Mr. Justice Hughes delivering the opinion of the Court held that the mere continuance of the obligation under the policy would not constitute the transaction of a local business for which a privilege tax could be exacted, since a privilege tax imposed by a State depends upon the State's consent, and that a continuance of the contracts of insurance already written was not dependent upon the consent of the State. The court also held that if the Company had continued to maintain an office or agents it might be considered a continuance of a local business in which case it would amount to the actual transaction of business and thus be taxable.

The mere continuance of the contractual obligation of the policies of insurance and the collection of premiums thereon out of the State were found by the Circuit Court to be beyond the control of the State.

NEW YORK.

"DOING BUSINESS." A foreign corporation, at an office in New York maintained by its stockholders and directors, made a contract for the sale of real property in another state. The contract provided that the deed should be delivered at the New York office and that installments of the purchase price should be paid there during a period of nearly four years. The Supreme Court, Appellate Term, First Department, held the corporation to be "doing business" in the state and denied its aid in enforcing the contract, since the corporation had not first obtained a certificate of authority to do business. The court said in part, "It is not necessary that a foreign corporation maintain an office in this state in order to transact business here and to come within the prohibition of the statute." Woodbridge Heights Const. Co. v. Gippert, et. al., 155 N. Y. S. 363.

LIABILITY OF STOCKHOLDERS. Section 28 of the Stock Corporation Law reads in part as follows:

"The directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation, nor divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division or reduction." * * *

Section 70 of the Stock Corporation Law reads as follows:

"Except as otherwise provided in this chapter the officers, directors and stockholders of a foreign stock corporation transacting business in this state, except

moneyed and railroad corporations, shall be liable under the provisions of this chapter, in the same manner and to the same extent as the officers, directors and stockholders of a domestic corporation, for:

1. The making of unauthorized dividends:
2. Unlawful loans to stockholders;
3. Making false certificates, reports or public notices;
4. An illegal transfer of the stock and property of such corporation, when it is solvent or its insolvency is threatened;
5. The failure to file an annual report.

Such liabilities may be enforced in the courts of this State, in the same manner as similar liabilities imposed by law upon the officers, directors and stockholders of domestic corporations."

The New York Court of Appeals holds that Section 70 gives a foreign corporation a remedy in New York for the declaration of unauthorized dividends which may not exist for the same offense in the state in which it was incorporated. The Legislature meant by Section 70 to extend to foreign corporations transacting business in that state the prohibitions in respect to dividends that earlier sections of the same statute had already laid on domestic corporations. The section establishes an offense against the laws of New York and does not merely declare a remedy in New York for an offense against the laws of the home state of the corporation. The Legislature has the power not only to make the act an offense against the New York laws but to give the right in action therefor to the corporation itself, a right which the home state did not grant. German-American Coffee Co. vs. Diehl, 216 N. Y. 57, 109 N. E. 875.

OKLAHOMA.

AN UNREGISTERED FOREIGN CORPORATION may not recover its property in an action of replevin in the State of Oklahoma. Goodner Krumm Company vs. J. H. Owens Mfg. Company, 152 P. 86. The statutes of Oklahoma (Secs. 1335, 1336, 1337 and 1341 Rev. Statutes Okl. 1910, Ann) provide that foreign corporations transacting business in the State and failing to comply with these laws as to registration cannot maintain any suit or action, either legal or equitable, in any of the Courts of the State, upon any demand, whether arising out of contract or tort.

OREGON.

SUIT MAY BE BROUGHT IN ANY COUNTY. Service of process in a transitory action on the statutory agent of a foreign corporation registered in the State of Oregon, gives complete jurisdiction to the Circuit Court of any county in the State regardless of the residence of the agent, the location of the principal office or place of business or where the cause of action arises. Ramaswamy vs. Hammond Lumber Company, 152 P. 223. In that case the defendant was doing business in a county in the western part of the State, where the cause of action arose and the action was brought in the extreme eastern section of the State. The court pointed out that actions may be removed in such case from one county to another but that

under the statute (Act 1903, Sec. 6726 L. O. L. regulating the registration for foreign corporations) the appointment of an attorney in fact, upon whom process may be served, is made for the whole State.

PENNSYLVANIA.

INTERSTATE COMMERCE. The mere solicitation of orders by a salesman of a foreign corporation and the transmission of the order to the office of the foreign corporation in another state where the order is accepted and the goods shipped by carrier to the vendee at its place of business in the state is not doing business within the meaning of the act of June 8th, 1911, P. L. 710, requiring registration of foreign corporations "doing business" in this commonwealth. Putney Shoe Co. vs. Edwards, 60 Superior Court, page 339.

SOUTH AND CENTRAL AMERICA.

PREREQUISITES TO DOING BUSINESS. Now that there is more reason than ever why the United States and the South and Central American countries should be united by financial and commercial connections, the question arises as to the most advantageous method of carrying on business in those countries. In a large number of instances, it has been found advisable to domicile the United States corporation under the laws governing foreign corporations. While the laws of the different countries vary, there is one requirement common to all. The charter or the by-laws or the organization records, and in some cases all three documents, must be presented to the embassy or the legation or consular agent for authentication or legalization. It is at this point that our Washington Office affords facilities for promptly attending to the details surrounding the preparation of papers for domiciling United States corporations in the countries of Latin America. Experience has shown the value of personal attention to these matters. Because we are called upon frequently to visit the various embassies and legations, our requests meet with prompt response. Members of the bar will save time and expense by entrusting this detail to our Washington Office.

TAXATION.

MASSACHUSETTS.

TAXATION OF SHARES OF STOCK.—Section 41, part 3 of the Tax Act of 1909, chapter 490, as amended by Statutes of 1914, chapter 198, relating to the annual franchise tax on domestic corporations, reads, in part, as follows:

"The tax commissioner shall ascertain from the returns or otherwise the true market value of the shares of each corporation subject to the requirements of the preceding section, and shall estimate therefrom the fair cash value of all said shares constituting its capital stock on the preceding first day of May, which, unless by the charter of a corporation a different method of ascertaining

such value is provided, shall, for the purposes of this part, be taken as the true value of its corporate franchise. From such value there shall be deducted:

* * * * *

'Third, In case of a domestic business corporation, the value of the works, structures, real estate, machinery, poles, underground conduits, wires and pipes owned by it within the Commonwealth subject to local taxation, and of securities which, if owned by a natural person resident in this Commonwealth would not be liable to taxation; also the value of its property situated in another state or country and subject to taxation therein. There shall not be deducted the value of securities which if owned by a natural person resident in this Commonwealth, would be liable to taxation, nor shall there be deducted the value of any shares of stock of the corporation itself owned directly or indirectly by it or for its benefit; and the tax commissioner in determining for the purposes of taxation the value of the corporate franchise of any such corporation shall not take into consideration any debts of such corporation unless the returns required from it contain a statement duly signed and sworn to, setting forth that no part of such debts was incurred for the purpose of reducing the amount of taxes to be paid by it.' "

Sections 515 and 516, chapter 30, Public Statutes of Vermont, read as follows:

"Sec. 515. **Listed How.** Shares of stock in corporations, except railroad corporations, shall be set in the list like other personal estate to the owner thereof, in the town where he resides, if he resides in the state, otherwise in the town where the corporation issuing such stock has its principal place of business.

Sec. 516. **Tax on Non-Resident's Stock.** Taxes assessed on such stock of non-residents shall be paid by the corporation, and it shall hold such stock and the dividends thereon as security for such payment and may deduct the amount from any dividends payable to such shareholders."

A Massachusetts corporation which owned shares in a Vermont corporation was taxed thereon by the State of Massachusetts and in suing to recover the tax, contended that the shares of stock which had been assessed to it were "property situated in another state and subject to taxation therein" within the meaning of Section 41 above and were exempt from taxation. The Supreme Judicial Court of Massachusetts, however, held that such shares were not such property, since the context in which the words occurred in the law demonstrate that they refer to the kind of property which, if owned by an individual and situated and taxed in another state, would be exempt from taxation in Massachusetts, such as real estate and "merchandise, machinery and animals." Shares of stock of foreign corporations are taxable to the owner where he resides in the Commonwealth, although the place of business and whole property are located in another jurisdiction. To tax the shares in Massachusetts which have already been taxed in Vermont is not double taxation and does not impair any right granted by state or federal constitutions. Bellows Falls Power Co. v. Commonwealth, 109 N. E. 891.

NEW YORK.

OCEAN NAVIGATION COMPANIES EXEMPT FROM TAX. In view of the prevalent interest in an American Merchant Marine, and the number of ships

now taking out American registry, it is of timely interest to call attention to the fact that the laws of New York grant total exemption from all taxes on ocean going ships and on the corporations owning and operating them until December 31, 1922. The text of subdivision 12, section 4 of the Tax Law is as follows:

"All vessels registered at any port in this state and owned by an American citizen, or association, or by any corporation, incorporated under the laws of the State of New York, engaged in ocean commerce between any port in the United States and any foreign port, are exempted from all taxation in this State, for state and local purposes; and all such corporations, all of whose vessels are employed between foreign ports and ports in the United States, are exempted from all taxation in this state, for state and local purposes, upon their capital stock, franchises and earnings, until and including December thirty-first, nineteen hundred and twenty-two."

OHIO.

ANNUAL FRANCHISE TAX. The annual franchise tax imposed on corporations "doing business" in Ohio cannot be collected from the assets of an insolvent corporation. A receiver cannot be required to file the franchise tax report nor pay the tax. Upon failure to pay the tax for ninety days the Secretary of State is required to cancel the charter of the company and the corporation's powers, privileges and franchises cease. The State cannot claim that the franchise tax still continues to accumulate against the corporation after the expiration of the ninety-day period because of the fact that the Secretary of State failed to cancel its charter. Keeney v. Dominion Coal Co., 225 Fed. 625.

PENNSYLVANIA.

CAPITAL STOCK TAX. Capitalization of net earnings of a Pennsylvania corporation by the State accounting officers as a basis for assessing capital stock tax was found improper in Commonwealth vs. Gimbel Brothers, C. P. Dauphin County No. 500, Com. Docket, 1911. The capital stock report made by the corporate officers showed certain net earnings. This figure was multiplied by ten and the result fixed as the value of the capital stock thus valuing the stock on a 10% basis. It was found as a matter of fact that the accounting officers in making such valuation had merely drawn certain inferences from the figures contained in the balance sheet and statement of dividends paid as contained in the capital stock report of the company and from that had reached their conclusion as to the value they subsequently placed as the valuation of the company's capital stock. It also appeared that the accounting officers had made no attempt to investigate actual facts or to require the corporation to inventory its property so as to ascertain the true facts. On the other hand the corporation had produced testimony on the hearing on appeal from settlement of the account by the accounting officers tending to show that the valuation placed on the stock by the accounting officers was excessive. The court, McCarrell, J., held that the appraisement made by the officers of the company was *prima facie* correct and that the burden of proving inaccuracies in the appraisement made by the corporate officers was upon the commonwealth.

In this case the commonwealth having produced no evidence contradicting the valuation placed on the corporate property by its officers the statement of the corporate officers of its value was permitted to stand.

Exemption from capital stock tax by a manufacturing company was denied in Commonwealth vs. Altoona Foundry and Machine Company, 18 Dauphin County. Reporter page 569, where it was shown that the manufacturing plant remained idle during the tax year by reason of business depression. The court, McCarrell, J., held that the statute granting exemption to manufacturing companies contemplates active operation of the plant and the actual carrying on of manufacturing.

The cases of Commonwealth vs. The John T. Dyer Quarry Company and Commonwealth vs. Williamsport Rail Company reported in The Corporation Journal, No. 47, Vol. 2, page 10, were affirmed by the Supreme Court of Pennsylvania reported in 250 Pa., pages 589 and 596 respectively.

U. S. SUPREME COURT.

DEDUCTION OF INTEREST FROM GROSS INCOME. In Journal No. 45, Vol. 1, we referred to the opinion of the Federal Circuit Court of Appeals in the case of Anderson v. Forty-Two Broadway Company, 213 Fed. 777. This court held that the realty company could deduct all of the interest paid on its indebtedness either under the third deduction of the corporation excise tax law or under the first deduction as a payment required to be made as a condition to the continued use or possession of property. The United States Supreme Court reversed this decision on November 8, 1915. The court points out that the Act of 1909 was not in any proper sense an income tax, nor intended as such, but was an excise upon the conduct of business in a corporate capacity, the tax being measured by reference to the income in a manner prescribed by the Act itself. The term "entire net income" as used in the Act has no other meaning than that which is set forth in the Act. Interest on "bonded or other indebtedness" comes within the specific provision of the third clause, whose effect is not limited in this respect by anything contained in the first. Congress evidently intended to limit the interest deduction and could do so without creating an arbitrary classification. It was reasonable for Congress to deem that where the indebtedness exceeded the capital stock the pecuniary interest of creditors overbalanced that of stockholders and that the contribution of the corporation to the expenses of the Government should be admeasured with this fact in view.

TRUSTS AND MONOPOLIES.

U. S. DISTRICT COURT.

THE READING CASE. The case of United States v. Reading Co. et al., decided July 3, 1915, has been reported in 226 Fed. 229. This case held that the agreement between The Lehigh Coal and Navigation Co. and the Central Railroad

Company of New Jersey whereby the former agreed to ship practically all of its coal over the road of the latter was not in violation of the Sherman Law. But the combination of the Reading Company, which owned all of the stock of the Philadelphia & Reading Company and of the Philadelphia & Reading Coal & Iron Co. with the Central Railroad Company of New Jersey which also owned the greater part of the stock of the Lehigh & Wilkesbarre Coal Company was held to be in restraint of interstate commerce, the two coal companies together mining and selling 20% of the total production of anthracite coal, which was sold largely in the same markets.

THE MOTION PICTURE PATENTS CASE. In this case the court decided that the copyright laws apply to photo-play presentations and that films shipped from one state to another are subjects of interstate commerce. The owner of a patent may by virtue of the patent laws impose reasonable conditions of bailment or sale, may acquire other patents and may combine with owners of other patents for mutual protection, so long as the purpose is not to restrain trade. Where a combination of motion picture producers and importers, some of whom had patents, created a board to censor films and established exchanges, refusing to sell films to operators of theatres who did not belong to their exchanges and who did not pay royalties on their machines to the combination regardless of when or from whom they were purchased, the restrictions were not justified as a protection of the patent rights, but the combination was invalid as a violation of the Sherman Law. U. S. v. Motion Picture Patents Co., et. al., 225 Fed. 800.

CIRCUIT COURT OF APPEALS.

CREAM OF WHEAT CASE. The decision of the U. S. District Court of New York in Great Atlantic and Pacific Tea Company vs. Cream of Wheat Company, 224 Fed. 556, (reported in The Corporation Journal Vol. 2, Page 61), was affirmed in an opinion (not yet reported) handed down by Lacombe, C. J., who holds that the Sherman Anti-Trust Act or the Clayton Act are not violated by the defendant. The court held, as did the lower court, that it is no offense against the common law, statutes, public policy or good morals for a trader to confine his sales to persons who will buy from him in large quantities, *e. g.*, a wholesaler. The court held and further remarked that it is elementary law that a trader may buy from whom he pleases and sell to whom he pleases and that his selection of seller and buyer are wholly his own concern. It is part of man's civil rights, the court continued, that he be at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason or is the result of whim, caprice, prejudice, or malice. "Neither the Sherman Act, nor any decisions of the Supreme Court construing it, nor the Clayton Act," the court said, "have changed the law in this particular. We have not yet reached the stage where the selection of a trader's customers is made for him by the Government."

INCOME TAX.

RULINGS AND REGULATIONS.

In November a regulation was issued authorizing banks and trust companies to sign ownership certificates by facsimile signature (p. 503).

The United States Supreme Court decision on deduction of interest paid on indebtedness was reported (p. 504). This opinion is summarized elsewhere in this number of the Journal.

Revised form No. 1031 for use in 1916 was published (p. 505).

A decision of the Circuit Court of Appeals for the Second Circuit denies a corporation the right to deduct salaries based on stock holdings as an expense of business (p. 509).

A ruling under date of November 24th, holds that one acting as a committee for an incompetent should use ownership certificates 1000B and 1000.

(NOTE: The page references above are to our Income Tax Service in which these rulings and regulations are printed in full. Some of the rulings are formal treasury decisions. Others are contained in letters in answer to specific questions.)

WAR TAX.

RULINGS AND REGULATIONS.

A ruling holds that stock deposited with a trustee as collateral for an issue of bonds is not subject to transfer tax (p. 289).

Master's deeds are held to be taxable in a decision of the Federal District Court S. D. Florida (p. 290).

A ruling holds that "gold coupon notes" issued in series by a corporation under the terms and conditions of a trust indenture are taxable as bonds, etc., under the first paragraph of Schedule A and not as promissory notes (p. 292).

A ruling describes in detail where stamps are to be affixed upon transfers of stock (p. 293).

A Treasury Decision holds that the 50% penalty does not accrue where special tax return is made within thirty days after receipt of necessary blanks (p. 294).

Special liability as a broker is not incurred by a person negotiating purchases of stocks, bonds, etc., solely for himself (p. 296).

Bills of lading are not required on reconsignment of goods not actually delivered (p. 296).

Part payment of a note, or of accrued interest, after maturity is not a renewal of the note so as to make it taxable (p. 297).

Conveyances of mining claims are not taxable (p. 298).

(NOTE: The page references above are to our War Tax Service in which these rulings and regulations are printed in full.)

FEDERAL RESERVE.

RULINGS AND REGULATIONS.

Informal rulings have appeared on the subject of open market operations, election of directors, deposit of reserves in Federal Reserve banks, acceptances, authority of national banks to act as receivers, and interlocking directorates (pp. 334 to 338). The Law Department has published opinions on endorsements on securities and gold order certificates deposited with Federal Reserve agents, endorsements on rediscounts deposited as security for Federal Reserve notes, endorsements on gold order certificates deposited to reduce liability on Federal Reserve notes, open market operations—single name paper, election of directors in connection with the interlocking directorate provisions of the Clayton Act (pp. 338 to 344). The Attorney General has issued an opinion on the power of the Federal Reserve Board to abolish Federal Reserve districts or Federal Reserve banks (p. 351) and the Secretary of the Treasury has announced his determination to appoint the Federal Reserve banks as depositaries and fiscal agents of the United States (p. 359).

(NOTE: The page references are to our Federal Reserve Act Service which reports in full all rulings and regulations under the Federal Reserve Act.)

TRADE COMMISSION.

No rulings or regulations have been issued by the Federal Trade Commission.

CONGRESS.

WHO WILL PAY THE COST OF PREPAREDNESS? The Sixty-fourth Congress, which convenes on December 6th, will consider the gravest revenue problem since Civil War days. Hundreds of millions of dollars will be asked for the Navy and the Army. Huge sums will still be required for the Panama Canal and many deficiencies of revenue from existing sources will have to be met by taxing new sources. Among the new sources of revenue which have been mentioned in Washington are: Tax on checks, inheritances, munitions of war, imported coal tar products, gasoline and other petroleum products, and on the horse power of internal combustion engines. It seems fairly well settled that the rate of the Income Tax will be increased and the specific exemptions will be lowered. The present war tax will, no doubt, be extended to new subjects of taxation and tariff schedules will be changed for the purpose of increasing revenue or limiting imports.

It is, of course, impossible to foretell the trend of tax legislation at the coming session. The important question is whether Congress, working under tremendous pressure, will be able to place the burden equitably on the merchant, the manufacturer and the consumer—those who will be called upon to bear the burden of the additional taxes. The importance of keeping posted on what Congress will do is

greater than ever this year. Our Legislative Department is making extraordinary preparations to serve its subscribers. The Department follows each bill in each branch of Congress and furnishes copies of all measures introduced, amended and enacted into law. It also reports on the successive steps of each measure from introduction to final disposition. Because of the extreme interest in the subject of revenue it is preparing to furnish a special service on tax legislation in Congress. For information as to the scope and price, address our New York Office.

UNITED STATES SUPREME COURT.

Many important cases have been argued or decided in the Federal Supreme Court since our last issue.

The case of United States v. Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft, et al. and the cross appeal was argued on November 3 and 4 and is now under advisement. In this case the defendants are charged with the offense of monopolizing the transportation of third class passengers between American and European ports.

The Court upheld the right of the State of New Jersey to tax the Morris Canal property in Morris Canal & Banking Company v. Baird.

The case of Bowditch v. The Jackson Company was dismissed for want of jurisdiction. This was a bill in equity to enjoin the sale of the assets of one company to another against the wishes of a minority. The Supreme Court of New Hampshire held that the minority could not defeat the will of the majority and in denying the rehearing took occasion to state: "The broad proposition that in the event of the dissolution either of a partnership or a corporation, a dissatisfied minority can take from the majority the power to dispose of the assets in a reasonable way, cannot be sustained. Before the control of liquidation is taken from the majority, it must be shown that they have violated their trust, and before a sale negotiated by them can be interfered with, it must appear that it was not a fair sale." The case is reported in 82 A. 1014–76 N. H. 351. There was no opinion by the Supreme Court.

The alien labor law of Arizona was held unconstitutional in Truax v. Raich. The New York law, Sec. 14 of the Labor Law, was upheld in Heim v. McCall, and Crane v. People.

On November 1 the court amended General Order in Bankruptcy No. 21, to read as follows:

"PROOF OF DEBTS.

1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to those of treasurer; if the treasurer or corresponding officer is not within the district wherein the bankruptcy proceedings are pending, the deposi-

tion may be made by some officer or agent of the corporation having knowledge of the facts. Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred."

DIRECTORY OF OFFICERS.

For the information of our clients we publish below a list of the officers of The Corporation Trust Company at the present time:

Kenneth K. McLaren, President,
Raymond Newman, General Manager,
Horace S. Gould, Secretary,
B. Stafford Mantz, Treasurer,
George E. Holmes, Assistant Secretary

Chicago Secretary,
William R. Watson.

Boston Secretary,
Norman J. MacGaffin.

Philadelphia Secretary,
J. Disbrow Baker.

Pittsburgh Secretary,
Carroll C. Robertson.

Albany Secretary,
Norman H. McLaren.

Jersey City Secretary,
John R. Turner.

Portland Secretary,
James E. Manter.

Washington Secretary,
Warren N. Akers.

Wilmington Secretary,
William J. Maloney.

St. Louis Secretary,
Joseph C. Cannon.

OUR ALBANY OFFICE met a great demand from the day it was opened. Lawyers from all points are sending to it papers to be filed with state officials, recognizing the many advantages of having some one at the Capital to give personal attention to their matters. Letters requiring immediate attention upon arrival in Albany should be addressed as follows: The Corporation Trust Company, P. O. Box 622, Albany, New York. Matter so directed is called for by us before the first regular morning delivery by the Post Office.

NEW PUBLICATIONS.

AN INDEX to The Corporation Journal, Volume 2, pages one to seventy-two inclusive, is sent out with this number. If not received please advise our New York Office.

THE CORPORATION JOURNAL should be kept in a binder for convenient reference. We furnish a substantial binder for $1.50.

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